



Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, FIRST SESSION

FRIDAY, MAY 10, 2002

Senator Christopher Bond “The State of Small Business”

Mr. President, I rise today to report on the State of Small Business and to bring to the Senate’s attention the concerns of the small business community. This week has been designated by President Bush as Small Business Week and all week there have been events and speeches that focus on the significance of small businesses to our economy, to our communities, and to the nation at large and highlight some of their accomplishments.

Small businesses in this country are, without question or disagreement, the foundation of the economy. They employ half of the private sector workforce and create two thirds of all new jobs. Small businesses constantly lead the way with innovative and creative approaches to solving our nation’s problems. Some currently large businesses started as small businesses and others have chosen to remain small even though they are very successful. This country’s future will be determined by today’s small businesses.

With so much at stake, we would be wise to listen to their concerns and learn what we can do to assist them and ensure their future. I have listened to the small businesses in my home state of Missouri for many years. I never fail to learn something new when I have the opportunity to meet with them. I would like to share with the Senate what is on their minds these days about how we can help them.

The issue that small businesses are absolutely flooding my office with mail over is the fact that they can not get, or simply can not afford, health care for their employees. There are about 40 million people in this country without health insurance and 60 percent of these, or about 24 million are employed or in a family of someone who is employed. That figure is shocking and demonstrates that the crisis that we once thought was simply looming, is now a reality.

Moreover, many of these individuals who are among the ranks of the “employed but uninsured” work for small businesses that would like to provide health insurance—but can’t—unless they are willing to jeopardize the existence of their own businesses. Still others in this group always provided their employees with health insurance coverage—that is until now—now, in today’s market where health insurance costs are exploding and spiraling out of control, they have been forced to eliminate health benefits.

This is not just a group of businesses that can not provide their employees with some lavish benefit; we are talking about employers who want to give their employees what they need to protect their children and families. This means mothers are not getting pre- and post-natal care, and children are not getting their vaccinations. It matters not how many mandates are passed by the states or whether we pass a Patients’ Bill of Rights, the truth is millions of employers can not afford to provide health care.

The only solution to help the employed but uninsured is to allow small businesses across the country to pool together and access health insurance through their membership with a bona fide trade or professional organization. This will provide small businesses the same opportunities as other large insurance purchasers. These Association Health Plans (AHPs) would reduce costs through greater economies of scale to spread costs and risk, increase group bargaining power with large insurance companies, and generate more insurance options for small businesses.

The principle underpinning AHPs is simple. This is the same principle that makes it cheaper to buy your soda by the case instead of by individual cans. Bulk purchasing is why large companies and unions can get better rates for their employees than small businesses. It is time that we bring Fortune 500 style health benefits to the nation’s Main Street small businesses and their employees.

AHPs are not a new idea. They have been talked about, argued about and compromised about for almost a decade. And during that period, what was once thought to be a manageable problem—became the crisis that we have today. Had we passed AHP legislation, we would not be seeing the problems we see today.

A bill has been introduced by my friend from Arkansas, Senator Hutchinson, that would create these AHPs, the Small Business Health Fairness Act of 2001. I can not overstate the urgency of moving this legislation. The House has already passed a similar bill. The President has said that he wants AHPs. The President does not want small businesses to be health insurance islands unto themselves, and I agree with him. We must do this for small businesses, their employees, and their employees’ families.

When small businesses are not telling me about their difficulties getting health insurance,

they are telling me what a mess the tax code is for them. Last summer we made enormous strides to cut the oppressive tax burden imposed on American taxpayers. On June 7, 2001, President Bush signed into law the Economic Growth and Tax Relief Reconciliation Act of 2001, which I worked to see passed in Congress during the last days of the Republican-controlled Senate. That Act provides the largest tax cut to the American people since 1981, and not a moment too soon given the economic slump that has gripped the nation since last year.

The President's tax package legislation held particular benefits for small business owners. The rate reductions in particular are providing immediate tax relief for America's entrepreneurs. According to the IRS, in 1998 there were more than 21.2 million tax returns filed by non-farm sole-proprietorships, partnerships, and S corporations with receipts of less than \$1 million. That is in contrast to 1.77 million C corporations.

As a result, a whopping 92% of these businesses (with receipts under \$1 million) are pass-through entities – businesses that are taxed only at the individual owner level. Consequently, the individual rate reductions included in the President's tax bill are cutting the taxes paid by sole proprietors, partners, and S corporation shareholders.

And we're not talking about rich "fat cats" here. According to 1999 Census data, of the nearly 15 million full-time, self-employed people in 1999, median business earnings were \$30,000 and 38% of them earned between \$30,000 and \$75,000.

In addition, the former Chief Economist for the SBA's Office of Advocacy, testified last March before the Senate Finance Committee that "[e]very dollar of profit or tax relief tends to be re-invested in the [owner's] firm." With more of their tax dollars in hand, these small business owners will be able to reinvest in their businesses – purchase new and more efficient equipment. They will be able to expand their product lines and the services they render. And – most importantly – they will be able to continue creating more jobs in our home towns!

But the tax bill did not stop at just cutting tax rates. It also dramatically changed the death tax, putting it on the road to extinction by 2010. Too often we have heard about the family-owned company that has had to be sold just to pay the death taxes. According to the SBA, more than 70% of all family businesses do not survive through the second generation and fully 87% do not make it to a third generation. That's an absurd result of the tax code.

But we're forgetting an even greater problem caused by the estate tax. Thousands of small businesses in this country waste millions of dollars each year on estate planning and insurance costs just to keep the doors open if the owner should die.

To put this into perspective, a survey of family owned businesses in Upstate New York revealed that average spending for tax planning

(i.e., attorney and consultant fees, life insurance premiums, internal labor costs, etc.) was nearly \$125,000 per company over a five year period. That's even before any Federal estate taxes are counted!

Just think what could be done with that kind of money in a small business if it didn't have to be paid to accountants, lawyers, and insurance companies. It could be used to create more jobs in our communities. In short, the estate tax can spell the end of a small business, but it is also a jobs killer in this country.

With all of its strengths, however, the tax bill has one major flaw – procedural rules in the Senate forced it to be limited to a ten-year life. So, while America's entrepreneurs can enjoy the benefits of the tax bill today and over the next several years, our work is not finished. We must make the tax cuts, and in particular the repeal of the estate tax, permanent! Otherwise, our success in reducing the tax burden will turn into the largest tax increase in American history come 2011. That's a result I will strongly oppose and hope never to see.

Of course, another of the primary issues that come to me is how to create more small businesses. Money and good management skills are keys to starting and running a successful small business. The federal government has demonstrated that it is capable of delivering help in both areas to small businesses through the Small Business Administration (SBA). Each year, over one million small business people and entrepreneurs receive help from the SBA's core management assistance programs: the Small Business Development Centers (SBDCs), SCORE, and the Women Business Centers.

At the same time, SBA has demonstrated an ability to make loans and venture capital available to 40,000 - 50,000 small businesses annually. While the number of small businesses has exploded over the past decade, the SBA credit programs have not been able to keep pace with the demand. As many of my colleagues in the Senate know, SBA's credit programs are not designed to compete with the private sector; rather, they are supposed to meet the demand from small businesses that cannot otherwise obtain a regular commercial loan or investment capital.

This demand is great; unfortunately, these programs are not meeting the growing small business demand, particularly from women-owned small businesses, which is the fastest growing small business segment. Much of the blame can be placed on career bureaucrats in the Office of Management and Budget (OMB) who use unrealistically high default estimates to drive up the cost of the SBA's flagship 7(a) guaranteed business loan program. Just for next year, OMB's estimates are adding an unnecessary \$100 million in appropriations to the cost to run the program. Since 1992, OMB's estimates have caused the borrowers and lender to pay about \$1.4 billion in excess fees. The excess fees and the pressure for higher appropriations have placed

unnecessary and counterproductive limits on the growth of the 7(a) loan program.

The other SBA credit programs have also experienced similar problems. The 504 Development Company Loan Program has paid excessive fees totaling over \$400 million, and the Small Business Investment Company Program has paid in \$500 million over the amount needed to run that program.

To begin to correct this problem, last December Congress enacted S. 1196, which included key provisions lowering the fees from the 7(a) and 504 loans programs. These changes will go into effect on October 1, 2002.

Last fall, I introduced the Small Business Leads to Economic Recovery Act of 2001 (S. 1493), which is designed to provide effective economic stimulus to small businesses in three distinct but complementary ways: increasing access to capital for the nation's small enterprises; providing tax relief and investment incentives for our small firms and the self-employed; and directing one of the nation's largest consumers – the Federal government – to shop with small business in America.

Subsequently, Senator Kerry and I introduced S. 1499, which adopts the access to capital provisions from S. 1493. This bill is a bipartisan collaboration to devise one-time modifications to the 7(a) and 504 Loan Programs because the traditional approach to disaster relief will not address the critical needs of thousands of small businesses located at or around the World Trade Center, the Pentagon and in strategic locations throughout the United States. S. 1499 has passed the Senate and is waiting for action in the House of Representatives. In the near future, I am hopeful we can add this important bill to another must-pass bill so that it can be on the President's desk for his approval.

The SBA has undertaken the first creative steps to reach more small business borrowers. I applaud their efforts and encourage the SBA management team led by Administrator Hector Barreto to do more. It is estimated there are as many as 25 million small businesses in the United States. Our federal credit programs need to be able to reach many more small commercial borrowers. When I hear from women's business owners that they cannot obtain loans or investment capital, I want to know why the SBA programs are not serving this fast-growing segment of our Nation's business community. When minority entrepreneurs cannot obtain credit, I want to know what SBA is doing to correct this problem.

As the Ranking Member of the Committee on Small Business and Entrepreneurship, I am in a position to take the battle to the OMB. But it is up to the SBA to work with our Nation's lenders and venture capitalists to find ways to expand existing programs and to create new ways to deliver credit assistance to help fuel the engine that drives the economy of the United States – the small business community.

One thing that can sap the strength of that engine is the burden imposed on small businesses by regulations. The SBA Office of Advocacy has estimated that regulations cost businesses with less than 20 employees almost \$7000 per employee per year. This is nearly 60 percent higher than businesses with over 500 employees.

Six years ago, Congress, without dissent in the Senate, took an historic step towards reigning in the federal government's regulatory machine and protecting the interests of small businesses. My Red Tape Reduction Act, what others call the Small Business Regulatory Enforcement Fairness Act, ensured that small businesses would be given a voice in the regulatory process at the time when it could make the most difference: before the regulation is published as a proposal.

Without question, the Red Tape Reduction Act has yielded some remarkable results and provided small businesses with a greater voice and opportunity to have an impact in the rulemakings which threaten to do them the most harm. Perhaps the best known provision is the requirement that OSHA and EPA convene panels to receive comments from small businesses before their regulations are proposed. This gives these agencies the unique opportunity to learn up front what the problems with their regulation may be, and to correct these problems when it will cause the least difficulty. This has resulted in significant changes being made, and in one case, EPA abandoning a regulation because they recognized that the industry could deal with the issue more effectively on their own.

Experience with this panel process has proven to be an unequivocal success. The former Chief Counsel for Advocacy of the Small Business Administration Jere Glover has stated that, "Unquestionably, the SBREFA panel process has had a very salutary impact on the regulatory deliberations of OSHA and EPA, resulting in major changes to draft regulations. What is important to note is that these changes were accomplished without sacrificing the agencies' public policy objectives."

Unfortunately, however, there are still examples where agencies have not provided small businesses with the appropriate opportunity to participate, and have flouted the requirements of SBREFA through abusing the flexibility Congress provided to the agencies to determine how and when they would comply. It has become clear that these are more than mere isolated incidents and that the Red Tape Reduction Act itself needs to be amended to achieve the goal Congress had in mind when passing the original Regulatory Flexibility Act, and the subsequent Red Tape Reduction Act.

This is why I introduced The Agency Accountability Act, S. 849 during last year's Small Business Week. This bill would further amend the Regulatory Flexibility Act and close some of the loopholes that agencies have exploited in their desire to pursue their regulatory agendas on the backs of small businesses by doing the following:

- It requires the agency to publish a summary of their economic analysis supporting the decision not to certify a regulation as not having “a significant economic impact on a substantial number of small entities,” and to make the full economic analysis available to the public so that interested parties will be able to evaluate whether the agency has met their burden to do adequate outreach and analysis in determining the impact of the regulation.

- It allows small entities to seek judicial review of this certification decision if they believe that the agency has not supported it with adequate data and analysis.

- It directs the Chief Counsel for Advocacy of the Small Business Administration to promulgate a regulation to define further the terms of “significant economic impact” and “substantial number of small entities” so that agencies can no longer define these terms themselves and claim that they were within the bounds of the law when their definitions allow them to avoid the requirements of SBREFA and the Regulatory Flexibility Act.

- Finally, it adds the Internal Revenue Service, the U.S. Forest Service, the National Marine Fisheries Service, and the Fish and Wildlife Service to the list of agencies that must conduct small business review panels before they can issue proposed regulations.

Another area the agencies have failed at miserably is to supply the compliance assistance that is required by the Red Tape Reduction Act. GAO has issued a report that clearly indicates how agencies have ignored this requirement or made a complete botch of it when they have attempted to meet it. I will be introducing legislation to address this problem soon.

My views are simple. I want an agency that intends to regulate how a business must conduct its affairs to do so carefully and only after it has taken every step to insure that it will impose on that small business the least amount of burden to achieve its stated objective. Once they do issue a regulation, they have an obligation to be able to explain what small businesses must do to comply with it. This is not about blocking agencies from promulgating regulations, it is about making sure they produce the best regulations possible with the least unnecessary burden on small businesses.

Six years ago, the Senate said in a unanimous voice that it wanted agencies to treat small businesses fairly. That commitment to protecting this most vulnerable segment of our economy, at a time when the Federal government can literally determine if a business will survive as a result of the regulatory burden imposed on it, is still alive. It is time that we ensured agencies are accountable for their actions by enacting the Agency Accountability Act.

On the positive side, the Federal government can be and should be a reliable and committed purchaser of goods and services from small businesses. The Small Business Act says that small firms shall have the maximum practicable opportunity to compete for Federal contracts. This is

good for small business, good for the purchasing agencies, and good for the taxpayer who pays the bills because when small business competes for contracts this lowers the prices and raises the quality.

Small business benefits from having access to a stable revenue stream while they get up-and-running. The Small Business Act recognizes how government contracting can contribute to business development and economic renewal. For example, my HUBZone program provides contracting incentives for small firms to locate in blighted neighborhoods, helping them win Federal contracts and stabilize their revenues while they develop a nongovernmental customer base.

The State of Small Business, on this front, is mixed. We finally succeeded in restoring funding for the HUBZone program, as SBA finally sent up a reprogramming request that the Appropriations Committee found acceptable. The mishap that occurred last year, of defunding the HUBZone program, has now been corrected.

Moreover, SBA is on the verge of removing the biggest of the roadblocks currently holding the HUBZone program back. Contrary to express Congressional direction, the previous Administration had put the HUBZone and 8(a) contracting programs in competition with each other, by trying to give an automatic preference to 8(a) in all cases. We at the Small Business Committee had sought to avoid pitting these programs against each other, by mandating parity between the programs. Contracting officers would be equally obligated to carry out both programs.

SBA disregarded the Congressional will on this point, and contracting officers found the regulations confusing. SBA's noncompliance hurt both programs, because contracting officers did not know what to do.

In January, SBA published proposed rules to correct this situation and to establish the parity that Congress intended. I am confident we are about to enter a new era in which the HUBZone program will finally live up to its potential.

And not a moment too soon, either. This program will direct contracting dollars into the most chronically distressed areas of the nation. People who live in these areas, without jobs and often without hope, need the opportunities that the HUBZone program will provide. Finally, we are going to get serious about getting help to these folks who need it so desperately.

Unfortunately, Federal government's performance in contracting with women-owned small businesses is less encouraging. Since 1994, when Congress enacted a goal of 5% of contract dollars for women-owned firms, the Government has consistently fallen short. We have never met that goal. We have never come close.

Last year, I received a report from the General Accounting Office on contracting participation by women-owned firms. The clear message was this: if the Government is to meet the 5% goal, the Department of Defense must meet its own 5% goal. D-O-D is the 800 pound gorilla in Federal procurement. Sixty-four percent of Fed-

eral contracting dollars come from the Pentagon. Without a full

D-O-D commitment to the women-owned business goal, the rest of the Government does not handle enough contracting dollars to make up the shortfall.

Similarly, D-O-D frequently uses the practice of bundling small contracts together so that small businesses are unable to bid on the work. In the words of President Bush, "Bundling effectively excludes small businesses." He understands this hurts small business and has asked OMB to look for ways to avoid this approach and for opportunities to break up bundled contracts to permit more participation by small business. I welcome the President's support in this cause.

This week Senator Kerry and I offered a bill that would close loopholes in the definition. I appreciated working with him to develop this important measure. Increasingly, it looks like we are getting close to a "meeting of the minds" on this issue, and I am hopeful we can at long last do something serious to control contract bundling and ensure that the Federal government's contracting practices allow for the maximum possible participation by small business.

Never has our country needed or relied upon small businesses as much as now in the wake of the devastating attacks of September 11. Yesterday, my colleague Senator Kerry and I introduced a resolution, S. Res. 264, expressing the sense of the Senate that small business participation is vital to the defense and security of our Nation. On September 11, 2001, the people of the United States were subject to the worst terrorist attack in American history. Our nation's response has been truly astounding. And it should come as no surprise that small businesses are playing a vital role in that response.

Small businesses have the unique ability to respond quickly and precisely, to emerging needs and conditions. Many of the most innovative solutions to our problems such as new technologies for defense readiness come from small firms. In fact, in October 2001, the Pentagon's Technical Support Working Group sent out an urgent plea, seeking ideas and technology to assist the military fight terrorism. In just two months, legions of small businesses responded to the Pentagon's call. Over 12,500 ideas poured into the Pentagon, most of them from small businesses. This remarkable response once again shows that small business remains the most innovative sector of the United States economy, accounting for the vast majority of new product ideas and technological innovations.

Just last week I had the opportunity to acknowledge the volunteer efforts of three Missouri companies that are helping re-build over an acre-long section of the Pentagon's roof, which was damaged badly in the September 11th terrorist attacks.

Frederic Roofing and Sheet Metal Company of St. Louis, Performance Roof Systems of Kansas City, and Watkins Roofing of Columbia, are

participating in a massive effort to help repair part of the damage sustained by the Pentagon. These Missouri companies are independent, small businesses, modern-day Davids ready and willing to take on part of a Goliath-sized project. They have joined with roofing contractors from across country and the National Roofing Contractors Association (NRCA) to raise in excess of \$500,000 worth of cash, materials, and labor toward this project. Their work reflects the enterprising spirit that makes small businesses such a potent force in our economy. They deserve our admiration for rolling up their sleeves and pitching in to help restore the Pentagon.

To help raise awareness of small business innovation in the homeland defense area, on July 10, 2002, Senator Kerry and I will co-host an expo on Capitol Hill to showcase small businesses and their homeland security products. The Small Business Homeland Security Expo will provide an opportunity for small business owners to educate us here in Washington about their latest innovative products, technology, and research. I am excited to bring these hardworking entrepreneurs here to show us just how valuable their contributions are to our Nation's security and defense. These small businesses are a cross-section of America – they are women-owned, minority-owned, and often represent economically disadvantaged areas.

Numerous small businesses have lined up to showcase their exciting products and services for homeland defense and the fight against terrorism. We intend to highlight these businesses at the Expo and in the accompanying book being prepared for the event. The work of small businesses toward this goal is a product of the same volunteer spirit that helped save lives, combat unthinkable disaster, and restore the nation's hope after the darkest hours of September 11th.

Mr. President, I am happy to report to the Senate that the small business sector of our economy is thriving even though the challenges they face are stiff and numerous. The determination to be successful is a hallmark of small businesses as it has been the foundation of our nation throughout the years. Small businesses are at the forefront of new advances in technology, health care, environmental management, and virtually every industry possible. I have no doubt that small businesses will continue to lead the way.

The big question I have is whether we will be able to help them. Small business wants the Federal government to be a friend, not an adversary. They want us to be their customer and advisor, not a competitor or intruder. In every action we take, we must always ask what the impact on small businesses will be, and make every effort to refrain from that action if we do not believe it will have a beneficial impact. The future of our country is tied to the future of small business and by enhancing the conditions that support small business, we will ensure a more prosperous future for all.

I thank the President and my colleagues.